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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,692	06/07/2006	Tetsuro Kurashina	3.0-042	3786

7590  
Michael E Zall  
Two Yorkshire Drive  
Suffern, NY 10901

12/11/2007

EXAMINER
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BUI, BRYAN

ART UNIT	PAPER NUMBER
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2863

MAIL DATE	DELIVERY MODE
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12/11/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/552,692

Applicant(s)

KURASHINA ET AL.

Examiner

Bryan Bui

Art Unit

2863

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                      | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-7, 9-12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim invention is the abstract ideas and legal agreements per se, it does not show how to performing the operation method? Where are the corresponding practical steps to perform the selection for selecting an appropriate shoe shape/selecting an appropriate shoe tip profile? They are not provided practical application to show the useful improvement (MPEP 2106). Further the transitional phase of the claim invention is missing. A method claims do not follows the format for the practice of U.S. Application.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 1, lines 4-6, "the foot length", "the foot girth", "the difference between the lengths of the first and second toes" lacks antecedent basis. There is no refers back for these limitations.

5. Claim 4, lines 4-6, "the foot length", "the foot girth", "the first toe height ratio" lacks antecedent basis. There is no refers back for these limitations.
6. Claim 7, lines 4-6, "the foot length", "the foot girth", "the customer's preference of the fit property of shoe" lacks antecedent basis. There is no refer backs for these limitations.
7. Claim 8, lines 10-12, "the foot length", "the foot girth", "the difference between the lengths of the first and second toes" lacks antecedent basis.
8. Claim 9, line 3-4, "the angle", "the first toe", "the difference between the lengths of the first and second toes" lacks antecedent basis. There is no refer backs for these limitations.
9. Claims 1-7, 9-12 provides for the use of foot length, foot girth, and a difference between the lengths of a first toe and a second toe in selection method , but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 1-7, 9-12 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Further, there are many problems to interrelationship between the claims invention. For example, claim 5 only depended on claim 4, can not depend on claim 3 (different sceranio of the embodiment ). Same problem are occurred in claim 6.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Claims 1-12 are rejected.

12. The general functional descriptive and many errors in the format of the claims. Especially, these claims need to be clear to show the improvement for practical application, and follows the format of the U.S. Practical application such indicated in the rejections of 112 and 101 as set forth above. Therefore, the prior art are not use to apply at this time, but at least discloses the broad claimed limitations (see ref 7236948, figure 6; ref 6823550, figures 1-3, 12; ref 6735547, figure 2; JP 2003-52416, abstract, claims) . Applicants are respectfully request to submit the details amendments corresponding to the technique in the specification, and consider these references along with the amendment to avoid the errors or rejection may occur.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan Bui whose telephone number is 571-272-2271.

The examiner can normally be reached on M-TH from 5:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Barlow can be reached on 571-272-2269. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Application/Control Number:  
10/552,692  
Art Unit: 2863

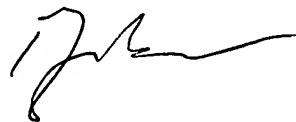
Page 5

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BB

12/5/2007

BRYAN BUI  
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to be 'Bryan Bui', written over the printed name and title.